

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1232 OF 2005

Shri Jyotirling Dev Trust

...Petitioners.

V/s

State of Maharashtra
and Ors.

...Respondents.

Mr. H.S. Venegaonkar for the petitioners.

Mr. S.R. Shinde, APP for the State.

MENTIONED, NOT ON BOARD:

CORAM: V.M.KANADE,J.

DATE: 26th April, 2005

P.C.:

1. This Petition has been filed by Shri Jyotirling Dev Trust registered under the Indian Trust Act and which has been subsequently registered under the Bombay Public Trust Act.

2. Petitioner is challenging the order passed by the Special Executive Magistrate dated 17/4/2005 under section 144 of the Code of Criminal Procedure whereby a prohibitory order has been passed restraining any members of the public from assembling near vicinity of Borgaon Police Station, Village Padali, Taluka and District Satara or to take out any procession. There is further restriction that five or more persons should not come together in the said prohibited area.

:2:

The condition No.2 prohibits any person from putting up any stalls during the period from 27/4/2005 to 28/4/2005. There is further prohibition of carrying on any entertainment activity in the said Village, for example, Tamasha and such other activities. The condition No.3 imposes a condition that the villagers are prohibited from holding any function during the said period and that condition No.4 states that the said order shall come into force from 20/4/2005 at about 05.00 a.m. to 05.00 a.m. 1/5/2005.

3. It is submitted by the learned Counsel appearing on behalf of the petitioners that the Trust has been empowered by the Assistant Charity Commissioner to take out religious procession to the said village and that there is a tradition of nearly 400 years of taking this particular procession during this relevant period to the Deity Jyotiba. It is submitted that the said order prevents the devotees from taking darshan of the Deity. The tradition is that one huge stick is carried from village Padali to Wadi Ratnagiri and, thereafter, it is brought back to Jyotiba at Padali and during this procession, devotees from various places take Darshan of this "Sasankati". It is submitted that this year, the Trust has been permitted to take the procession of the "Sasankati".

4. The learned APP appearing on behalf of the State, after taking instructions from V.S. Jadhav, API of the Borgaon Police Station states that the arrangements have been made by the Police to see that the Sasankati shall be accompanied by one Police Patil, Talathi and darshan of the Deity may be permitted to be taken by these two Officers and also the other Police Officers who shall be present at that time in order to ensure that there is no breach of peace. The trustees of the Petitioner - Trust who were present in Court, gave an undertaking to this Court that they shall abide by all the conditions which are imposed by the Police and shall not put up any stalls other than the tea stalls and the stalls for the purpose of providing water to the devotees. They also undertake that no function will be held during the relevant period and that there shall be no entertainment programmes organized by the Trust during the relevant time. Undertaking is also given that no meetings will be held during the relevant period within the said area. Petitioner - Trust also to give similar undertaking to the Executive Magistrate and to the concerned Senior Officer of Borgaon Police Station.

4. There cannot be any doubt that the Executive Magistrate can in his discretion pass an order under section 144 taking into consideration the prevailing condition in the said locality. However, at the same time, care has to be taken to ensure that the religious sentiments of the people are also not hurt or devotees are prevented from taking darshan of the Deity.

5. In view of the undertaking given by the Trust, the condition No.1 imposed by the Executive Magistrate is modified and the devotees are permitted to take darshan of the Sasankati in an orderly manner without holding any meetings or putting up any stalls except the stalls for providing tea and water.

6. It is clarified that the Sasankati will be permitted to be carried by the persons who are legally entitled to carry the said Sasankati this year along with the devotees in the presence of Police Patil, Talathi and the Police Force in order to ensure that no untoward incident takes place. With these directions the order dated 17/4/2005 is modified.

7. This order has been passed today since the procession is going to reach Padali Village at 5

:5:

O'clock in the morning tomorrow.

8. Criminal Writ Petition is disposed of in the above terms.

9. All concerned to act on the copy of this order duly authenticated by the Sheristedar/Personal Secretary/Registry.

V.M. KANADE, J.